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EXAMINER

REFAI, RAMSEY

ART UNIT

PAPER NUMBER

3627

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/016,900 | Applicant(s) KAKIVAYA ET AL. | |
| | Examiner Ramsey Refai | Art Unit 3627 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-22 and 24-35 is/are pending in the application.
- 4a) Of the above claim(s) 32-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-22 and 24-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Responsive to Request for Continued Examination (RCE) filed May 16, 2008. Claim 3 was canceled. Claim 1 was amended. Claims 1, 4-22, and 24-31 remain pending further examination.

Response to Arguments

1. Applicant's arguments filed May 29, 2007 have been fully considered but they are not persuasive.

- In the remarks, the Applicant argues in substance:

Argument A: *The finality of the rejection is improper. The Examiner has issued a restriction for the first time and has issued a new grounds of rejection that was not necessitated by Applicant's amendment.*

In response, the Examiner respectfully disagrees. In the final action, the 102 rejection in view of Bracho was merely maintained. The Examiner addressed the Applicant's issues concerning the elected claims and did not include any new grounds of rejection(s). Furthermore, 37 C.F.R. 1.142 allows for a restriction requirement to "be made at any time before final action". In light of the Applicant's remarks made on May 29, 2007 and after careful review of the pending claims, a restriction was deemed necessary. The restriction requirement was made prior to final action and was therefore proper.

Argument B: *Bracho does not teach determining the order of events on the basis of sequence numbers; the cited portion of Bracho teaches that duplicate events are discarded on the basis of sequence numbers, but not that the sequence numbers are used for ordering events. Furthermore, Bracho et al do not teach the sequence numbers are on a per subscription basis.*

In response, the Examiner respectfully disagrees. As is well known to one skilled in the art, **a sequence number is used to determine order**. Bracho et al's discarding of duplicate events based on the sequence number clearly teaches that the sequence number is used to determine the order of the events (See column 14, lines 14-17). Furthermore in Figure 9, Bracho et al teach routing blocks for each event. The routing information includes a sixty-four-bit sequence number initially assigned to the event by the publisher. (See Fig. 9, column 15, lines 36-39) Therefore, Bracho meets the scope of the claimed limitation.

Specification

2. The abstract of the disclosure is objected to because of improper content and language. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 24-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a *distributed system*, which according to pages 33-34 of the Applicant's specification can be software. Software per se claims are ineligible for patent protection because they do not fall within any of the four statutory classes of § 101. The claims are therefore directed to non-statutory subject matter.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 and 4-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1: the limitation "the event subscription" in line 19 lacks proper antecedent basis.

Claims 4-6: the limitation "the received event messages" lacks proper antecedent basis.

Claim 7: the limitation "the events raised" lacks proper antecedent basis.

Claim 14: the limitation "the event subscription" lacks proper antecedent basis.

Claim 15: the limitation "the event" lacks proper antecedent basis.

Claim 16: the limitation "the event subscription" lacks proper antecedent basis.

Claim 17: the limitation "the type description language" lacks proper antecedent basis.

Claim 19: the limitation "event messages" lacks proper antecedent basis.

Claims 21-22: the limitation "the network" lacks proper antecedent basis.

Dependent claims that depend from the above claims are also rejected for similar reasons based upon their dependencies.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 24-26, and 28-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Bracho et al (U.S. Patent No. 5,974,417).

9. As per claim 24, Bracho et al teach a distributed system comprising:

a first digital device (**column 4, lines 50-52, fig 1; subscriber**);

a second digital device capable of communicating with the first digital device by way of a computer network (**column 4, lines 1-17 and 50-52, fig 1; publisher**), said first digital device subscribing to a first event source operating on the second digital device whereby the first digital device receives event notification messages (**column 4, lines 1-17 and 50-52; subscriber subscribes to events from publisher**) each comprising a subscription based-sequence number and a time stamp from the first event source when events occur on the first digital device (**column 14, lines 16-17, fig 9**).

10. As per claim 25, Bracho et al teach an intermediary device in communication with the first digital device and the second digital device whereby the event notification messages are routed to the intermediary device and thereafter forwarded to the first digital device (**column 5, lines 21-24, fig 1, Hubs**).

11. As per claim 26, Bracho et al teach wherein the event notification messages are constructed in a type description language (**column 5, lines 55-57**).

12. As per claim 28, Bracho et al teach wherein the first digital device determines the order that events occurred on the second digital device by way of the sequence number (**column 14, lines 16-17, fig 9**).

13. As per claim 29, Bracho et al teach wherein the event notification messages are one-way messages (**column 4, lines 50-66**).

14. As per claim 30, Bracho et al teach wherein the first digital device and the second digital device are coupled to an intranet (**column 4, lines 47-49; TCP/IP network**).

15. As per claim 31, Bracho et al teach wherein the first and second digital device are coupled to an Intranet (**column 4, lines 47-49; TCP/IP network**).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bracho et al (U.S. Patent No. 5,974,417) in view of "Official Notice".

18. As per claims 27 Bracho et al fail to teach the use of extensible markup language. However, "Official Notice" is taken that both the concept and advantage of XML is well known in the art. It would have been obvious to one of the ordinary skill in the art at the time of the applicant's invention to include extensible Markup Language because lets Web developers and designers create tags that offer greater flexibility in organizing and presenting information than is possible with the older HTML document coding system.

Allowable Subject Matter

19. Claims 1, 4-22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

20. The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art of record, neither singularly nor in combination, teach a method of receiving another at least two event messages each comprising a subscription based-sequence number and a time stamp from the second event source when second events occur at the second event source; determining the order of events within the second event source on the basis of the subscription based-sequence number within the another at least two event messages from the second event source; and ordering the events from the second event source with respect to the first event source on the basis of the time stamp within each of the at least two event messages from the first event source and the another at least two event messages from the second event source in combination with the other limitations as recited in claim 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571)272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ramsey Refai
July 23, 2008
/Ramsey Refai/
Art Unit 3627